

House Engrossed

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 150

HOUSE BILL 2644

AN ACT

AMENDING SECTION 11-809, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTION 11-806.03, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 33, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, AS SECTION 33-422; AMENDING SECTION 33-422, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; RELATING TO REAL ESTATE LAND DIVISIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 11-809, Arizona Revised Statutes, is amended to read:

11-809. Review of land divisions; definitions

A. The board of supervisors of each county may adopt ordinances and regulations pursuant to this section for staff review and approval of land divisions of five or fewer lots, parcels or fractional interests, Any of which is ten acres or smaller in size. The county may not deny approval of any land division that meets the requirements of this section. If review of the request is not completed within thirty days after receiving the request, the land division is considered to be approved. At their ITS option, the board of supervisors may submit a ballot question to the voters of the county to allow the voters to determine the application of subsections B and C to qualifying land divisions in that county.

B. An application to split a parcel of land shall be approved if:

1. The lots, parcels or fractional interests each meet the minimum applicable county zoning requirements of the applicable zoning designation.

2. The applicant provides a standard preliminary title report or other acceptable document that demonstrates legal access to the lots, parcels or fractional interests.

3. The applicant provides a statement from a licensed surveyor or engineer, or other evidence acceptable to the county, stating whether each lot, parcel or fractional interest has physical access that is traversable by a two-wheel drive passenger motor vehicle.

4. THE APPLICANT RESERVES THE NECESSARY AND APPROPRIATE UTILITY EASEMENTS TO SERVE EACH LOT, PARCEL OR FRACTIONAL INTEREST CREATED BY THE LAND DIVISION.

C. An application to split a parcel of land that does not comply with one or more of the items listed in subsection B shall still be approved if the applicant provides an acknowledgment that is signed by the applicant and that confirms that no building or use permit will be issued by the county until the lot, parcel or fractional interest has met the requirements of subsection B. The county may grant a variance from one or more of the items listed in subsection B.

D. Any approval of a land division under this section may:

1. Include the minimum statutory requirements for legal and physical on-site access that must be met as a condition to the issuance of a building or use permit for the lots, parcels or fractional interests.

2. Identify topographic, hydrologic or other site constraints, requirements or limitations that must be addressed as conditions to the eventual issuance of a building or use permit. These constraints, requirements or limitations may be as noted by the applicant or through county staff review, but there shall be no requirement for independent studies.

E. If the requirements of subsections A through D do not apply, a county may adopt ordinances and regulations pursuant to this chapter for staff review of land divisions of five or fewer lots, parcels or fractional interests but only to determine compliance with minimum applicable county zoning requirements and legal access, and may grant waivers from the county zoning and legal access requirements. The county may not deny approval of any land division that meets the requirements of this section or where the deficiencies are noticed in the deed. A county may not require a public hearing on a request to divide five or fewer lots, parcels or fractional interests, and if review of the request is not completed within thirty days from receipt of the request, the land division shall be deemed approved. If no legal access is available, the legal access does not allow access by emergency vehicles or the county zoning requirements are not met, the access or zoning deficiencies shall be noticed in the deed. If a county by ordinance requires a legal access of more than twenty-four feet roadway width, the county is responsible for the improvement and maintenance of the improvement. If the legal access does not allow access to the lots, parcels or fractional interests by emergency vehicles, neither the county nor its agents or employees are liable for damages resulting from the failure of emergency vehicles to reach such lot, parcel or fractional interest.

F. It shall be unlawful for a person or group of persons acting in concert to attempt to avoid the provisions of this section or the subdivision laws of this state by acting in concert to divide a parcel of land into six or more lots or sell or lease six or more lots by using a series of owners or conveyances. This prohibition may be enforced by any county where the division occurred or by the state real estate department pursuant to title 32, chapter 20.

G. In this section:

1. "Legal access" means a public right of vehicular ingress and egress between the lots, parcels or fractional interests being created.

2. "Minimum applicable county zoning requirements" means the minimum acreage and dimensions of the resulting lot, parcel or fractional interest as required by the county's zoning ordinance.

3. "UTILITY EASEMENT" MEANS AN EASEMENT OF EIGHT FEET IN WIDTH DEDICATED TO THE GENERAL PUBLIC TO INSTALL, MAINTAIN AND ACCESS SEWER, ELECTRIC, GAS AND WATER UTILITIES.

Section 2. Section 11-806.03, Arizona Revised Statutes, is transferred and renumbered for placement in title 33, chapter 4, article 2, Arizona Revised Statutes, as section 33-422 and, as so transferred and renumbered, is amended to read:

33-422. Land divisions; recording; disclosure affidavit

A. A seller of five or fewer parcels of land, other than subdivided land, in an unincorporated area of a county and any subsequent seller of such a parcel shall furnish a written affidavit of disclosure to the buyer, at

1 least seven days before the transfer of the property, and the buyer shall
2 acknowledge receipt of the affidavit.

3 B. The affidavit must be written in twelve point type.

4 C. No release or waiver of a seller's liability arising out of any
5 omission or misrepresentation contained in an affidavit of disclosure is
6 valid or binding on the buyer.

7 D. The buyer has the right to rescind the sales transaction for a
8 period of five days after the affidavit of disclosure is furnished to the
9 buyer.

10 E. The seller shall record the executed affidavit of disclosure at the
11 SAME time of transfer of THAT the deed IS RECORDED. The county recorder is
12 not required to verify the accuracy of any statement in the affidavit of
13 disclosure. A subsequently recorded affidavit supersedes any previous
14 affidavit.

15 F. The affidavit of disclosure shall meet the requirements of section
16 11-480 and follow substantially the following form:

17 When recorded mail to:

18 _____
19 _____
20 _____
21 _____

22
23 Affidavit of Disclosure
24 Pursuant to A.R.S. § 11-806.03 33-422
25

26 I, _____ (seller(s))
27 being duly sworn, hereby make this affidavit of disclosure
28 relating to the real property situated in the unincorporated
29 area of:

30 _____, County, State of Arizona, located at:

31 _____
32 and legally described as:

33 (Legal description attached hereto as exhibit "A")
34

35 (property).

36 1. There ☐ is ☐ is not....legal access to the property, as defined
37 in A.R.S. § 11-809....☐ unknown

38 Explain: _____
39 _____
40 _____

41 2. There ☐ is ☐ is not....physical access to the property.
42 ☐ unknown

43 Explain: _____
44 _____
45 _____

- 1 3. There ☐ is ☐ is not....a statement from a licensed surveyor or
2 engineer available stating whether the property has physical access
3 that is traversable by a two-wheel drive passenger motor vehicle.
4 4. The legal and physical access to the property ☐ is ☐ is
5 not....the same....☐ unknown ☐ not applicable.
6 Explain: _____
7 _____
8 _____
9 If access to the parcel is not traversable by emergency
10 vehicles, neither the county nor AND emergency service providers
11 may NOT be held liable for any damages resulting from the
12 inability to traverse the access to provide needed services.
13 5. The road(s) is/are ☐ publicly maintained ☐ privately maintained
14 ☐ not maintained ☐ not applicable. If applicable, there ☐
15 is ☐ is not....a recorded road maintenance agreement.
16 If the roads are not publicly maintained, it is the
17 responsibility of the property owner(s) to maintain the roads
18 and roads that are not improved to county standards and accepted
19 for maintenance are not the county's responsibility.
20 6. A portion or all of the property ☐ is ☐ is not....located in
21 a FEMA designated regulatory floodplain. IF THE PROPERTY IS IN A
22 FLOODPLAIN, IT MAY BE SUBJECT TO FLOODPLAIN REGULATION.
23 7. The following services are currently provided to the property: ☐
24 water ☐ sewer ☐ electric ☐ natural gas ☐ single party
25 telephone ☐ cable television services.
26 8. The property is served by ☐ a private well ☐ a shared well
27 ☐ no well. If served by a shared well, the shared well ☐ is
28 ☐ is not....a public water system, as defined by the safe
29 drinking water act (42 United States Code § 300f).
30 9. The property ☐ does have ☐ does not have an on-site wastewater
31 treatment facility (i.e., standard septic or alternative system to
32 treat and dispose of wastewater). ☐ unknown. If applicable: —
33 a) The property ☐ will ☐ will not require installation of an
34 on-site wastewater TREATMENT facility; b) THE ON-SITE WASTEWATER
35 TREATMENT FACILITY ☐ HAS ☐ HAS NOT BEEN INSPECTED.
36 10. The property ☐ has been ☐ has not been subject to a percolation
37 test. ☐ unknown.
38 11. The property ☐ does ☐ does not....meet the minimum applicable
39 county zoning requirements of the applicable zoning designation.
40 12. Whether The sale of the property meets ☐ DOES ☐ DOES NOT...MEET
41 the requirements of A.R.S. § 11-809 regarding land divisions. If
42 those requirements are not met, THE PROPERTY OWNER MAY NOT BE ABLE
43 TO OBTAIN A BUILDING PERMIT. The seller or property owner shall
44 disclose each of the deficiencies to the buyer.

1 Explain: _____

2
3
4 This affidavit of disclosure supersedes any previously recorded
5 affidavit of disclosure.

6
7 I CERTIFY UNDER PENALTY OF PERJURY THAT THE INFORMATION
8 CONTAINED IN THIS AFFIDAVIT IS TRUE, COMPLETE AND CORRECT
9 ACCORDING TO MY BEST BELIEF AND KNOWLEDGE.

10
11 Dated this ____ (date) ____ day of ____ (year) ____ by:

12
13 Seller's name (print): _____ Signature: _____

14
15
16 Seller's name (print): _____ Signature: _____

17
18 State of Arizona)
19) ss.
20 County of _____)

21
22 Subscribed and sworn before me this ____ (date) ____ day of
23 ____ (year) ____, by _____.

24
25
26 _____
Notary public

27 My commission expires:

28
29
30 ____ (date) ____
31 Buyer(s) hereby acknowledges receipt of a copy of this affidavit
32 of disclosure this ____ (date) ____ day of ____ (year) ____

33
34
35 Buyer's name (print): _____ signature: _____

36
37
38 Buyer's name (print): _____ signature: _____

39 G. For the purposes of this section, seller and subsequent seller do
40 not include a trustee of a deed of trust who is selling property by a
41 trustee's sale pursuant to title 33, chapter 6.1 or any officer who is
42 selling property by execution sale pursuant to title 12, chapter 9 and title
43 33, chapter 6.

APPROVED BY THE GOVERNOR MAY 6, 2002.

- 5 -

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2002.

Passed the House April 8, 2002,

by the following vote: 46 Ayes,

3 Nays, 11 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 20, 2002,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]
President of the Senate

Chaimin B. Winston
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

30 day of April, 2002

at 2:56 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 6th day of

May, 2002,

at 3:46 o'clock P M.

[Signature]
Governor of Arizona

H.B. 2644

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 7 day of May, 2002,

at 3:13 o'clock M M.

[Signature]
Secretary of State